

# **FUNDAMENTALS OF TRIAL ADVOCACY COURSE**

September 30 – October 4, 2019  
Phoenix, Arizona



## **ADMITTING EVIDENCE**

Presented by:

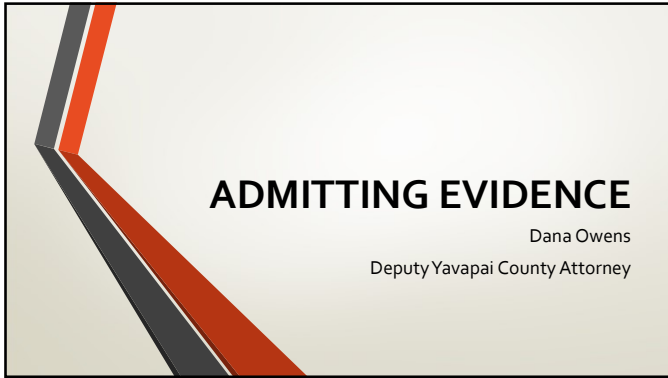
**Dana E. Owens**

Deputy Yavapai County Attorney  
Yavapai County Attorney's Office

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
1951 West Camelback Road, Suite 202  
Phoenix, Arizona 85015

ELIZABETH BURTON ORTIZ  
EXECUTIVE DIRECTOR



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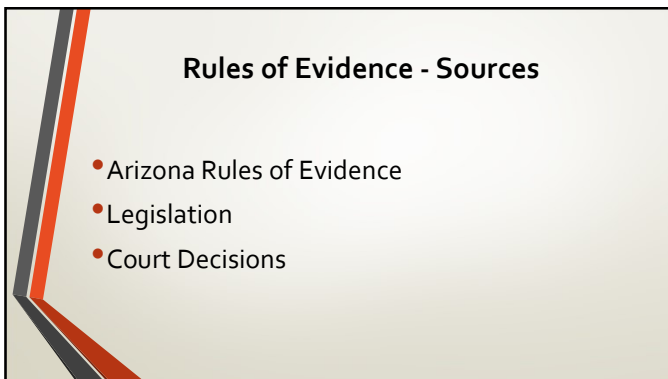
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## Types of Evidence

### *Direct*

- Evidence which, if believed, resolves a matter at issue
- Ties defendant directly to crime

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## Types of Evidence

### *Circumstantial*

- Facts are inferred from circumstances
  - Witness testified they saw defendant's car leave scene of shooting

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## Examples of Evidence

- |   |                                 |
|---|---------------------------------|
| • Testimonial Evidence                      | • Clothing                      |
| • Video – store recordings / body camera    | • Digital Evidence              |
| • Photographs                               | • Lab / Test results            |
| • Audio Evidence – 911 calls, IV recordings | • Weapons – guns, knives, rocks |
| • Documentary Evidence                      | • Drugs                         |

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### Is Your Evidence Admissible?

- Defense Motions to Suppress
  - Ariz. R. Crim. P. 16.2
- State's / Defendant's Motions in Limine
- Stipulations
- State's Ethical Duties

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### Planning For Trial

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### What Evidence is Needed to Prove Your Case?

- What evidence **MUST** be admitted to prove each element of your case?
- What witness will you use to admit each piece of evidence?
- Consider demonstrative evidence.
- What objections will you need to overcome?

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### What Evidence is Needed to Prove Your Case?

- Inspect / review evidence with case agent (defense counsel?)
- Create exhibit / witness list
- Ensure redactions are made of video / audio / photo
- Decide what you DON'T need / consolidate

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### Preparing For Trial

- Prepare witnesses (including victims)
  - Review evidence before trial
  - Review recordings / transcripts before trial
  - Review photos
  - Discuss what can / cannot be said
  - Review exhibits if necessary / possible

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### Preparing For Trial

- Prepare Exhibits
  - Make redactions
  - Ensure ability to publish – check your technology
  - Make sure exhibits get to court – arrange for storage if necessary
  - Get exhibits to clerk to mark prior to trial

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### Preparing For Trial

- Consider:
  - Which witness will be used to admit each exhibit? Make a list.
  - Have case agent ready to unseal evidence w/ defense to save time
  - Group photos to save time – admit quickly

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### Trial – Now What?

- “The Dance”
  - May I approach the exhibits?
  - Showing defense counsel exhibit # \_\_\_\_
  - May I approach the witness?
  - I am handing you exhibit # \_\_\_\_
  - LAY PROPER FOUNDATION \*
  - State moves to admit exhibit # \_\_\_\_ into evidence
  - State requests to publish exhibit # \_\_\_\_ to the jury
  - Return exhibit to clerk!

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### Laying Your Foundation

- WHO
- WHAT
- WHEN
- WHERE
- WHY (sometimes)

Me : let me sleep

Brain : lol no, let's stay awake and remember every stupid decision you made in your life.

Me : okay

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### Laying Your Foundation

- Your Goal:
- Establish that the evidence is what you purport it to be. You must show:
  - Recognition
  - Identification
  - Authentication

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### Laying Your Foundation

- 1. Do you know what this is? (**Recognition**)
- 2. What is it? (**Identification**)
- 3. How do you know what this is? (**Authentication**)

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### Laying Your Foundation

If exhibit is a representation of something else, or has been altered since it was collected, you must further clarify with 4<sup>th</sup> question:

- Photo, video, diagram or other representation:
  - Is this a fair and accurate depiction of \_\_\_\_\_?
- For altered exhibit:
  - Is this \_\_\_\_\_ in the same or substantially similar condition as when you found it?

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### Move to Admit Your Evidence

- Anticipate objections—be prepared to respond
- It is okay to ask defense counsel what foundational element is missing (hilarity often ensues!)
- Judge may direct you to ask more questions
- This is NOT a problem!

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### Move to Admit Your Evidence

- Keep a record of what you have admitted
- Don't pass your witness until you are sure that all evidence listed for them is admitted
- Get your case agent to keep track if needed

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### Publish to the Jury

- Show the jury the evidence:
  - Place in front of them
  - Show on ELMO
  - Show on video recording
  - Play audio recording

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### Publish to the Jury

- Wear gloves with drugs or other physical evidence
- Witness can demo that a firearm is safe
- NEVER point weapon at anyone, even if safe
- Weapons and ammo go back to jury separately
- Show drugs, but send back photo to jury
- Maintain chain of custody and evidence security!

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### Return Exhibits to Clerk

- Don't keep exhibits!
- Drugs go back into LE evidence.
- Collect at end of each day and ensure you *and defense counsel* don't have any.
- Maintain chain of custody during trial
- Avoid mistrial! Review admitted exhibits at end of trial to ensure that ONLY admitted evidence goes to jury!

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### Common Objections

- Lack of foundation
- Chain of custody
- Prejudicial, Rule 403 (Probative value vs. prejudicial effect)
- Hearsay ( judges often don't understand it)

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### Practical Tips

- Written stipulations
- Hash out evidentiary issues prior to trial
- Don't have to have the person that took the photo
- Don't need everyone (every link) in chain of custody
  - Goes to weight, not admissibility
- Have witnesses view / listen to recordings prior to trial
- Practice!

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### Questions?

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